No. 85-1358

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

WILLIAM L. LUKHARD, COMMISSIONER
VIRGINIA DEPARTMENT OF SOCIAL SERVICES,
Petitioner,

v.

ONA MAE REED, SALLIE LONG, RUTH WILCHER,
OPAL MAE COOK, STELLA KING, AND ALL
OTHERS SIMILARLY SITUATED,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF ON BEHALF OF PETITIONER

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QUESTION PRESENTED

Whether, under the Social Security Act, a state can require a recipient of an Aid to Families with Dependent Children (AFDC) grant who receives a lump sum personal injury award to use such funds to meet future living expenses in lieu of allowing such recipient to spend the funds to regain AFDC eligibility?

PARTIES TO THE PROCEEDINGS

The parties in the proceedings below include plaintiffs Ona Mae Reed, Sallie Long, Ruth Wilcher, Opal Mae Cook, Stella King, and all others similarly situated; William L. Lukhard, Commissioner, Virginia Department of Social Services; and the Secretary of the United States Department of Health and Human Services.

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OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is reported at 774 F.2d 1270 (4th Cir. 1985) and is set forth in the Petition Appendix ("Pet. App.") at pages 1-22.

The Order of the court of appeals denying petitioner's motion for rehearing with a suggestion for rehearing *en banc* is set forth in the Petition Appendix at pages 55-57.

The Order of the court of appeals staying its mandate is set forth in the Petition Appendix at pages 58-60.

The Order of the court of appeals denying respondents' motion

to vacate or modify the stay of mandate is set forth in the Petition Appendix at pages 61-62.

The Opinion and Order of the United States District Court for the Western District of Virginia, Roanoke Division, is reported at 591 F. Supp. 1247 (W.D. Va. 1984), and is included in the Petition Appendix at pages 23-52.

The Final Order of the district court, issued on October 3, 1984, is set forth in the Petition Appendix at pages 53-54.

JURISDICTION

The judgment of the court of appeals was entered on October 10, 1985. (Pet. App. 1). Petitioners filed a petition for rehearing with a suggestion for an *en banc* rehearing on October 31, 1985, which the court of appeals denied on November 14, 1985. (Pet. App. 55). The court of appeals stayed the mandate on November 21, 1985, upon motion of the petitioner, pending application to this Court for a writ of *certiorari*. (Pet. App. 58). This Court granted the writ of *certiorari* on June 23, 1986. 59 U.S.L.W. 3840 (U.S. June 23, 1986) (No. 85-1358). Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Because of their length the provisions of law involved in this case are set out verbatim in the Petition, Appendix D or in the Appendix of this brief. Those provisions of law are:

1. 42 U.S.C. § 602(a)(17). (Pet. App. 63).
2. 42 U.S.C. § 602(a)(17) (amended 1984). (Pet. App. 64-65).
3. 45 C.F.R. § 233.10(a)(1). (Pet. App. 66-67).
4. 45 C.F.R. § 233.20(a)(3)(ii)(D). (Pet. App. 68). Subsequent version at 45 C.F.R. § 233.20(a)(3)(ii)(F). (Pet. App. 69).

5. 51 Fed. Reg. 9191 (1986) (to be codified at 45 C.F.R. § 233.20(a)(3)(ii)(F)). Attached hereto at Brief, Appendix 23.
6. Virginia Department of Social Services Aid to Dependent Children Manual § 305.4(C). (Pet. App. 71-77).
7. Virginia Department of Social Services Aid to Dependent Children Manual § 305.4(C) (amended 1985). (Pet. App. 78-89).

STATEMENT OF THE CASE

The central issue presented in this case is whether personal injury awards may continue to be treated by the Commonwealth of Virginia as "income" in determining eligibility for grants under the Aid to Families with Dependent Children (AFDC) program, as required by recent regulations issued by the U.S. Department of Health and Human Services.[1] Under Virginia Aid to Dependent Children (ADC) rules, property damage awards are treated differently. Property damage awards are considered the equivalent of the property that was lost and, thus, are counted as a "resource" exempt or partially exempt from consideration in determining a potential recipient's need for benefits. Personal injury awards (less allowable expenses), however, are considered windfall payments, not necessary to replace a family resource such as a car or house and, thus, are free to be spent without restriction by potential AFDC recipients. Such payments, therefore, are counted as "income" which is considered in its entirety in determining a potential recipient's need for government subsistence payments under the AFDC program.

On June 6, 1983, Respondents Reed, Long and Wilcher initiated a class action challenging this distinction made between personal injury and property damage awards. Respondents argued that Virginia's treatment of personal injury awards as "income" violated the Social Security Act, 42 U.S.C. §§ 602(a)(7),

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[1]The AFDC program is codified at 42 U.S.C. §§ 601-615. Current rules defining "income" are set forth at 51 Fed. Reg. 9191, (1986) (to be codified at 45 C.F.R. § 233.20(a)(3)(ii)(F)). (Brief App. 23) (J.A. 82-86).

(a)(10), and (a)(17). Subsequent to the initiation of this suit, Respondents Cook and King were allowed to intervene as plaintiffs, and the U.S. Department of Health and Human Services was joined as a necessary party.

This controversy arose because of an amendment to 42 U.S.C. § 602(a)(17) (Pet. App. 63), which was enacted in 1981 as a part of an extensive attempt to cut the federal budget.[2] This amendment created what is known as the "lump sum rule" which provides for a period of prospective ineligibility for AFDC benefits whenever a member of the AFDC family has received a nonrecurring lump sum payment.[3] In essence, under the rule, the lump sum payment becomes the family's AFDC grant for a prescribed period. The period of ineligibility is determined by dividing the total of a family's lump sum payment and other income by the family's monthly standard of need. The resulting quotient represents the number of months of disqualification. (Pet. App. 71).

The 1981 OBRA amendment required the states to incorporate the lump sum rule into their AFDC plans. In response to this requirement, Virginia adopted § 305.4(C) of the Department of Social Services' (DSS) Aid to Dependent Children Manual (the "Manual"). (Pet. App. 71). This provision requires all

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[2]Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, § 2304, 95 Stat. 357, 845 (1982). Prior to passage of OBRA in 1981, all payments that represented an accumulation of current income received in a single sum, such as Old Age, Survivors and Disability Insurance (OASDI) benefits, were required to be considered as income for purposes of the AFDC program. (J.A. 55, 56). Certain other payments, such as inheritances and insurance awards, were considered "windfall" payments. (J.A. 82). States were allowed to treat such windfall payments either as income or as a resource. (J.A. 58, 66, 83, 84). Those windfall payments treated as income were regarded as income *only* in the month received; thereafter, to the extent that any money was left, it was considered a resource. Whether treated as a resource upon receipt or in the months following the month of receipt, such windfall awards reduced a family's need and affected eligibility for AFDC grants *if retained*. (J.A. 25). If expended, the family was eligible for AFDC benefits in the month next after the resource was spent down to permissible levels.

[3]The respondents also challenged the application of the lump sum rule to AFDC recipients who were without earned income. The district court granted petitioner's Motion for Summary Judgment on that issue, and no appeal was taken. 591 F. Supp. at 1253-1254. (Pet. App. 37-41).

nonrecurring lump sums, including personal injury awards, to be considered "income" available to meet subsistence expenses in the months following receipt.[4] Under this provision, receipt of a personal injury award renders a family ineligible for AFDC benefits for a period of time which, as indicated above, is based on the size of the award and the family's need. For example, if the state's need standard were $400 per month, under this rule a family which received a personal injury award equal to $20,000 after deduction of allowable expenses would be ineligible for assistance for approximately 50 months on the theory that the award would be spent wisely over these months to meet basic needs.[5] If the same award were treated as a "resource", however, the family could spend the entire amount on consumer goods such as TVs, stereos, appliances or jewelry and regain eligibility for full AFDC benefits immediately.

Upon cross-motions for summary judgment, the district court held that personal injury awards should not be treated as "income" for purposes of determining AFDC eligibility under the lump sum rule. The district court, relying upon the dictionary definition of income and the meaning of income in the context of

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[4]Virginia's application of the lump sum rule has been approved by the U.S. Department of Health and Human Services at all times relevant to this case as being in compliance with the federal statute and implementing regulation.

[5]Before the period of ineligibility is calculated, the lump sum is reduced by associated expenses, such as medical and rehabilitative expenses and legal fees which were incurred prior to or within thirty days after receipt of the award. (Pet. App. 72). Thus, the amount of a lump sum personal injury award subject to the rule is that portion representing pain and suffering, loss of earning capacity, future medical expenses, and punitive damages.

At the time the complaint in this case was filed in the district court, in accordance with the provisions of 45 C.F.R. § 233.20(a)(3)(ii)(D) (Pet. App. 68), § 304.4(C) of the Manual allowed the lump sum to be reduced further only where a life-threatening circumstance existed and the lump sum had been or would be expended for such circumstances. (Pet. App. 75).

Congress amended 42 U.S.C. § 602(a)(17) in 1984 (Pet. App. 64), enabling states to deduct additional expenses from lump sums and thereby shorten a family's period of ineligibility for a number of less than life-threatening circumstances, among them the incursion of additional medical expenses by the family beyond the thirty-day period. The Virginia Board of Social Services, after complying with the requirement of the State Administrative Process Act, implemented this option on September 19, 1985. (Pet. App. 78).

the Internal Revenue Code, concluded that the ordinary meaning of income does not encompass compensation for personal injuries. 591 F. Supp. at 1256-1257. (Pet. App. 47-51). The district court further concluded that Congress intended to limit the application of the lump sum rule to those lump sum payments that met the meaning of ordinary income. *Id.* Accordingly, the court enjoined the state from counting lump sum personal injury payments as income rather than as a resource. (Pet. App. 53).

The Commonwealth appealed this decision on the ground that personal injury recoveries were properly treated as income for purposes of applying the lump sum rule. The court of appeals affirmed the decision of the district court holding that, in adopting 42 U.S.C. § 602(a)(17), Congress intended to reach only payments that ordinarily would be considered income and not all large payments of money. 774 F.2d at 1273-1275. (Pet. App. 11-17). The court of appeals further held that Virginia's regulation applying the lump sum rule to personal injury awards was arbitrary and inequitable and thus violated 45 C.F.R. § 233.10(a)(1), the "equitable treatment regulation." *Id.* (Pet. App. 66).

On June 23, 1986, this Court granted Virginia's petition for a writ of *certiorari* to determine whether the Commonwealth's interpretation of the lump sum rule, which encourages potential AFDC recipients to spend personal injury awards wisely to defray living expenses over a period of time, is consistent with congressional intent and, therefore, valid under the Social Security Act.

SUMMARY OF ARGUMENT

The word "income" as used in 42 U.S.C. § 602(a)(17) has never been defined by Congress within the AFDC program. It does not have a clear, plain meaning, and its meaning varies depending on the circumstances of its use. In the context of the lump sum rule, it is clear Congress intended to include in the definition of "income" all large payments of money, including personal injury awards. To hold otherwise would subvert the policy objectives of fiscal restraint and individual responsibility that the lump sum rule was enacted to serve.

The court of appeals' reliance upon statutory language and interpretations drawn from programs and sources outside the AFDC program to fashion a common definition for the term "income" was both misplaced and erroneous. The court of appeals not only misread the meaning of income in these other contexts, but also gave "income" the same meaning in the AFDC program as in those contexts, regardless of differences in program goals and objectives. Such uniform treatment of the term "income" ignores the unique goals and objectives of the AFDC program and the lump sum rule and should be overruled.

Treating personal injury awards as "income" subject to the lump sum rule, while at the same time treating as a resource insurance awards received as a result of damage or destruction to existing personal or real property, does not violate the federal equal treatment regulation. It is not illegal to treat individuals differently when they are in fact in different circumstances. Furthermore, the distinction is sustainable because it advances reasonable and identifiable governmental objectives in a rational fashion.

ARGUMENT

I.

VIRGINIA'S TREATMENT OF PERSONAL INJURY AWARDS AS "INCOME" IS CONSISTENT WITH THE INTENT OF CONGRESS.

A.

The language of 42 U.S.C. § 602(a)(17), its legislative history, and its administrative interpretation all support Virginia's treatment of personal injury awards as "income."

In enacting the lump sum rule, Congress referred to the receipt of "income" throughout, but did not define the term for purposes of the AFDC program. Therefore, in order to determine whether personal injury awards are properly considered "income" for purposes of awarding AFDC benefits, this Court must ascertain the intent of Congress and interpret the AFDC statute accordingly. *United States v. American Trucking Assoc., Inc.*,

310 U.S. 534 (1940). The starting point for determining congressional intent is the language of the statute itself; if the language is ambiguous or unclear, then resort is made to the legislative history.[6] *Blum v. Stenson*, 465 U.S. 886 (1984).

The definition of "income" may vary depending on the context in which it is used. *See Davis v. Coler*, 789 F.2d 474 (7th Cir. 1986). Basically, income is an increase in one's economic power. Money paid to compensate people for personal injuries does increase their economic power. In that fundamental sense, personal injury awards are income. They may be spent, invested, or otherwise used to improve one's position. To the extent that such a payment represents lost wages, past or future, it is not different from the receipt of wages themselves, even though it may be taxed differently.

There is no uniform, accepted definition of "income" that must be read into all statutes regardless of context or intent.[7] Resorting to the dictionary definition of the term "income" to resolve an ambiguity in its meaning is of little value. Such reference provides only a static meaning and fails to take into account the context in which the word is used.[8] As this Court recently acknowledged:

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[6]As this Court has frequently stated, however, "there is wisely no rule of law forbidding resort to explanatory legislative history no matter how clear the words may appear on superficial examination." *Harrison v. Northern Trust Co.*, 317 U.S. 476, 479 (1943) (quoting *United States v. American Trucking Assoc., Inc.*, 310 U.S. 534, 543-544 (1940)). Thus, "the plain-meaning rule is 'rather an axiom of experience than a rule of law,'" *Watt v. Alaska*, 451 U.S. 259, 266 (1981), and inquiry into the particular circumstances surrounding the enactment of legislation "may persuade a court that Congress did not intend words of common meaning to have their literal effect." *Id.* at 266.

[7]Even 42 C.J.S. *Income* (1944) cited by the court of appeals for the proposition that income "represents a gain or profit," 747 F.2d at 1274 (Pet. App. 12), states: "Its specific meaning in a particular case is governed by the intent of the parties as deduced from the context, the subject matter of the instrument, and the character of the person, or persons, employing it .... Generally or ordinarily the term means all that comes in ...." 42 C.J.S. *Income* 528, 529 (1944).

[8]"But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." *Cabell v. Markham*, 148 F.2d 737, 739 (CA2) (L. Hand, J.), *aff'd.* 326 U.S. 404 (1945)." *Watt v. Alaska*, 451 U.S. at 266, n.9.

"[a] word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Regents of the University of California v. Bakke*, 438 U.S. 265, 284 (1978) (quoting *Towne v. Eisner*, 245 U.S. 418, 425 (1918)). The Seventh Circuit's conclusion on this point in a case identical to this is well reasoned: "'Income' is a legal construct rather than an economic truth; there is no natural meaning of a legal construct."[9] *Davis v. Coler*, 789 F.2d at 477. Thus, the Court must look beyond the plain language of the statute in order to ascertain what Congress intended "income" to mean for purposes of the lump sum rule.[10]

The legislative history of the OBRA amendment to 42 U.S.C. § 602(a)(17), the administrative proposal on which the amendment was based, and the administrative interpretation of "income" since its enactment all support the inclusion of personal injury awards in "income" for AFDC purposes. The court of appeals erred in looking beyond the AFDC program to determine what Congress intended "income" to mean. It cited the Internal Revenue Code, the Food Stamp Program, and poverty guidelines promulgated by the U.S. Department of Health and Human Services (DHHS) in support of its finding that personal injury

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[9]In this regard, the word "income" is similar to the word "unemployment." Both are commonly used words. *Batterton v. Francis*, 432 U.S. 416 (1977), involved the interpretation of the term "unemployment" as used in the AFDC statute. This Court recognized that the term was ambiguous and subject to more than one "tautalogical definition" and found that it "is often used in a specialized context where its meaning is other than simply not having a job." *Id.* at 427, 428. The term "income" also is capable of a variety of meanings depending on the context of its use. *See Fullerton v. Central Lincoln People's Utility District*, 185 Or. 28, 32, 201 P.2d 524, 526 (1948) ("The word 'income' is capable of a variety of meanings, depending upon the manner of its use."); *Merrick v. Delavan Engineering Co.*, 243 Iowa 39, 48, 50 N.W.2d 586, 591 (1951) ("Income is a broad and comprehensive term which has been frequently defined by the courts with some variations, depending on the context.").

[10]In *Heckler v. Turner*, 105 S.Ct. 1138 (1985), this Court considered whether mandatory payroll tax deductions are "income" for AFDC purposes. That question, like the question in this case, was generated by statutory changes effected by OBRA. Despite the obvious tax consequences of any definition it might give to the term, rather than relying on the Internal Revenue Code, this Court examined the language of the Social Security Act, the administrative background to the OBRA amendments, and the relevant legislative history in order to ascertain congressional intent. *Id.* at 1144-1147.

awards should not be considered "income" in determining eligibility for AFDC benefits. Such references, however, are misplaced. It is a long settled tenent of statutory construction that statutes are not read *in pari materia* when they do not concern the same subject and serve different objectives. *Northern Pacific Railway Co. v. U.S.*, 156 F.2d 346, 350 (7th Cir. 1946), *aff'd.* 330 U.S. 248 (1947) (The Transportation Act of 1940 is not *in pari materia* with the Embargo Act of 1940, Property Requisitioning Act of 1941, and the National Defense Act of 1941; terms "military and naval property" given broader meaning in Transportation Act); *see also* 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 51.03 (4th Ed. Revision 1984).

The AFDC program is a flexible, highly complex, cooperative federal-state program of public assistance.[11] The purposes of the AFDC program and the Internal Revenue Code are vastly different. The dominant purpose of the tax code is to generate revenue. *Blumenfield v. U.S.*, 306 F.2d 892 (8th Cir. 1962); *see also Helvering v. Horst*, 311 U.S. 112 (1940). The purpose of the AFDC program is to provide financial assistance to needy, dependent children and their resident parents or guardians. *See* 42 U.S.C. § 601. The purpose of the lump sum rule is to reduce or eliminate welfare benefits for those considered by Congress to be less needy because they have available other sources of income or resources with which to support themselves.

There is no specific statutory provision in the AFDC statute excluding personal injury awards from consideration as income as there is in the tax code.[12] The court of appeals' reliance upon the Internal Revenue Code to determine the meaning of income within the AFDC statute is misplaced. If carried to its conclusion, such reliance would lead to a bizarre meaning of the lump sum rule. For example, Section 102 of the Internal Revenue Code excludes gifts and inheritances from inclusion in gross income.

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[11]This Court has previously noted: "The Social Security Act is among the most intricate ever drafted by Congress. Its Byzantine construction, as Judge Friendly has observed, makes the Act 'almost unintelligible to the uninitiated.' *Freidman v. Berger*, 547 F.2d 724, 727, n. 7 (CA2 1976), *cert. denied*, 430 U.S. 984 (1977)." *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981) (footnote omitted).

[12]The exclusion of personal injury awards as income subject to taxation is expressly established by I.R.C. § 104(a)(2).

Under the court of appeals' analysis, an AFDC recipient could receive a large gift of money or receive a sizeable inheritance and remain eligible for AFDC. Such treatment obviously would thwart what Congress and the Administration attempted to achieve and clearly demonstrates the danger of construing similarly terms which appear in statutes that have vastly different purposes and objectives.

Also misplaced is the court of appeals' reliance upon the definition of income in the Food Stamp Program. Once again, as with the Internal Revenue Code, there is a specific exclusion. Retroactive lump sum insurance awards are excluded from the calculation of household income for purposes of the Food Stamp Program pursuant to 7 U.S.C.§ 2014(d)(8). That section reads:

> Household income for purposes of the food stamp program shall include all *income* from whatever source excluding only . . . (8) moneys received in the form of nonrecurring lump sum payments, including, but not limited to . . . retroactive lump-sum insurance settlements . . . . (Emphasis added.)

What the court of appeals overlooked is that, absent such specific congressional exclusion, such payments would be considered income for purposes of this federal aid program. Otherwise, there would be no need for the exclusion. The failure to include a similar exclusion in the language of the lump sum rule clearly indicates Congress intended "income" to be given its broadest reading in that context. *See North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521-522 (1982).

The court of appeals also relied on the fact that, in revising annual poverty income guidelines, DHHS excluded compensation for injury when considering income for eligibility purposes for certain federal programs which use poverty guidelines as eligibility criteria. 48 Fed. Reg. 7010-7011 (Feb. 17, 1983). The court of appeals, however, undertook no examination of the specifics of the programs that use such guidelines, their statutory bases or their purposes. Programs that use such poverty guidelines for eligibility purposes cover such diverse areas as alien employment authorization, 8 C.F.R. § 109.1, discounts to migrant health centers, 42 C.F.R. § 56.303, and eligibility for free legal services, 45 C.F.R. § 1611.3. The objectives of these programs are readily distinguishable from those of the AFDC

program, and, thus, these administrative interpretations provide no basis for determining what Congress intended "income" to mean for AFDC purposes.

B.

The legislative history of 42 U.S.C. § 602(a)(17) and its administrative background and interpretation demonstrate that Congress intended personal injury awards to be considered "income" subject to the lump sum rule.

On May 5, 1981, DHHS Secretary Richard S. Schweiker forwarded the Administration's draft bill proposing the lump sum rule to the Speaker of the House of Representatives, Representative Thomas P. O'Neill. (Pet. App. 90-92). In his cover letter to Speaker O'Neill, Secretary Schweiker indicated that the AFDC amendments proposed would "conserve Federal resources by assuring that State programs concentrate their efforts on families most in need, encourage work, structure State programs as a temporary safety-net rather than a way of life for the indefinite future, emphasize individual responsibility, and improve program administration...." (Pet. App. 90).

Of specific concern to both the Administration and Congress was the fact that nonrecurring lump sum payments had been treated under the former statutes and regulations either as "income" only in the month of receipt or as a resource. For example, a payment which represented an accumulation of "income" received in a single sum, such as an initial OASDI payment, was treated as current income and served to disqualify the recipient only in the month of receipt. (J.A. 55, 56, 58). Thereafter, any amounts remaining unspent were treated as a resource and served to disqualify such individual only if the amount remaining exceeded the resource cut-off level.

At the same time certain other non-recurring payments, such as inheritances, gifts, and insurance settlements, were considered "windfall" payments (J.A. 82) and states were allowed to choose whether to define such payments as income or as a resource. (J.A. 47, 58, 66, 83, 84). If defined as a resource, a windfall payment

would not impact eligibility if, when added to other resources, it did not exceed the state's resource limit. If the windfall payment exceeded the state's resource limit, eligibility could be regained if the money was spent quickly. (J.A. 25). Thus, rather than helping people become self-sufficient and spend their money wisely, treatment of lump sum windfall payments as resources encouraged AFDC recipients to spend such sums quickly in order to regain eligibility.

In the section-by-section summary accompanying the draft bill, Secretary Schweiker specifically mentioned lump sum payments of insurance proceeds as a target of the lump sum rule:

> *Under current law, there is no way to assure that large payments, such as lump-sum payments of insurance proceeds, or retroactive benefit payments,* are considered available to meet current needs over a period of time, even though the family eligibility can be curtailed for the month of receipt. The proposal would specify that *these large payments,* together with other income remaining after application of the disregards, *would be considered as income* in the month of receipt and that the family would be ineligible for the number of months obtained by dividing all that month's countable income by the applicable standard. (Emphasis added.) (Pet. App. 93).

It is important to note that, in describing the Administration's proposal, the Secretary did not refer only to lump sums which met some preconceived definition of income. The Secretary spoke in terms of large payments, giving several examples, and then stated that "these large payments" would be considered income available to meet the family's needs over a period of time.

The Administration consistently described its proposal in terms of the receipt of a "large amount of money" or "large payments" including payments generally not defined as income for tax purposes such as insurance proceeds, inheritances, and retroactive benefit payments. On several occasions when Secretary Schweiker communicated with congressional committees, he described his proposal in similar language:

> We are also introducing proposals to insure that people assume more personal responsibility for planning the use of income to meet their needs.
>
> When *a large amount of money* is received as a lump sum, *for example, an inheritance,* we will *consider it as income available* for support not only in the month it is received, but to meet needs over a period of time. (Emphasis added.)

Spending Reduction Proposals: Hearings on Administration's Spending Reduction Proposals Before the Senate Comm. on Finance, 97th Cong., 1st Sess. 18 (1981) (statement of Richard S. Schweiker, Secretary, U.S. Dept. of Health and Human Services). (J.A. 53, 54).[13]

Not only did Congress enact § 402(a)(17) of the Act using the same language that the Administration submitted in § 104 of the draft bill, but the relevant congressional committees also reflected an understanding of the purpose and scope of the Administration's proposal. The House Ways and Means Committee, in a staff report, summarized the proposal by stating:

> *AFDC Proposal 13: averaging unearned income received as a lump-sum payment.*
>
> *Background:*
>
> According to DHHS, lump-sum payments that meet the definition of income, such as retroactive Social Security payments, now are counted as income in the month when received, and, if an excess remains, as resources thereafter.
>
> *Proposed Change:*
>
> Require States to *consider all lump-sum payments as income available to meet a family's needs.* The

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[13] *Id.* at 33 (J.A. 74); *See also Administration's Proposed Savings in Social Security Program: Hearings on the Administration's Proposed Savings in the Unemployment Compensation, Public Assistance and Social Service Programs Before the Sub. Comm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways and Means,* 97th Cong., 1st Sess. 12 (1981) (statement of Richard S. Schweiker, Secretary, U.S. Dept. of Health and Human Services) (J.A. 64).

> household would be ineligible for AFDC if a lump-sum payment exceeded the standard of need. Any excess sum in the month when received would be carried forward for later use. (Emphasis added.)

STAFF OF HOUSE COMM. ON WAYS AND MEANS, 97TH CONG., 1ST SESS., DESCRIPTION OF THE ADMINISTRATION'S LEGISLATIVE RECOMMENDATIONS UNDER THE JURISDICTION OF THE WAYS AND MEANS COMMITTEE 58 (Comm. Print 1981) (Brief App. 24-25).

The House Committee provided further explanation of the rationale and effects of the proposal:

> *Rationale*
>
> All income available to recipients of AFDC should be taken into account in determining benefit amounts and continued eligibility. This proposal will eliminate the disincentive for recipients to budget lump-sum amounts over a period of time while encouraging the use of these payments to meet basic needs.
>
> *Effects*
>
> This proposal will reduce or eliminate AFDC benefit payments to recipients receiving lump-sum amounts for the subsequent months in which the prorated lump-sum amount exceeds the state's AFDC needs standard.

STAFF OF HOUSE COMM. ON WAYS AND MEANS, 97TH CONG., 1ST SESS., TAX ASPECTS OF THE PRESIDENT'S ECONOMIC PROGRAM, 265-266 (Comm. Print 1981) (J.A. 75-76).

In its recommendation to the Budget Committee on OBRA, the Senate Finance Committee summarized the lump sum proposal by stating:

> Under present law, any payments that meet the definition of income (*e.g.*, retroactive social security benefits) are counted as income in the month of receipt and any of the payment that is not spent in that month is usually considered a resource in the months thereafter.

> The committee amendment would require that *large payments*, together with other income remaining after the application of disregards, *be considered available to meet ongoing needs* in the AFDC program.... (Emphasis added.)

S. REP. NO. 139, 97th Cong., 1st Sess. 436, *reprinted in* 1981 U.S. CODE CONG. AND AD. NEWS 396, 702. (J.A. 24).

It is these two sentences of the Senate Finance Committee's recommendation that the court of appeals said unmistakably revealed Congress' intent to restrict the application of the lump sum rule to those payments that ordinarily would be considered "income." 774 F.2d at 1275. (Pet. App. 15). Nothing in the Committee report departs, however, from Secretary Schweiker's own description in his section-by-section summary submitted with the draft bill to Speaker O'Neill. *Supra* at p. 13. Indeed, comparison of the two sentences in the Senate Finance Committee Report to the two sentences of Secretary Schweiker's summary reveals that they are remarkably similar in both content and structure. In each statement, the first sentence is a statement of current law.[14] The second sentence in both is a statement of what was intended to be changed. Secretary Schweiker refers to "*these large payments*, together with other income remaining after the application of the disregards," referring to his examples of lump sum payments of insurance proceeeds or retroactive benefit payments. The Senate Finance Committee Report merely states "large payments, together with other income remaining after the application of disregards."

The foregoing legislative history and administrative background reveal that Congress enacted the lump sum rule using the same language proposed by Secretary Schweiker. The Secretary clearly indicated to Congress that lump sum payments of insurance proceeds were to be considered an "income" subject to the rule. The responsible congressional committees understood the rule as proposed, using language remarkably similar to the Secretary's to describe the proposal. Congress indicated no disagreement with the proposal as described by the Secretary and

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[14]The use of the phrase "any payment that meets the definition of income" reflects an understanding of the longstanding DHHS policy whereby states were given freedom to define certain "windfall" payments, such as inheritances and insurance awards, as "income" or a resource. If defined by the state as "income", then such payments were counted as "income" only in the month of receipt and, thereafter, as a resource as described by the Committee.

added no qualifications or exclusions. It must, therefore, be accepted that Congress intended the lump sum rule to apply to all large payments including personal injury awards and inheritances as well as retroactive social security benefits and other payments that meet some narrower definition of "income."

The overall objective of the OBRA amendments was to reduce the growth of federal expenditures "in order to wage an effective battle against the high inflation and unemployment which have plagued the national economy for many years." S. REP. NO. 139, 97th Cong., 1st Sess. 3, *reprinted in* 1981 U.S. CODE CONG. & AD. NEWS 396, 398. The changes made in the AFDC program by OBRA were intended, in part, to fulfill this objective.[15] The

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[15]In testifying before the Budget Committee of the House of Representatives prior to the actual submission of the Administration's draft bill proposing spending cuts and program restructuring for the AFDC program, Secretary Schweiker declared:

> This budget is an essential part of the President's program for economic recovery....
>
> For this program to succeed, budget control is essential. The excessive past rates of increase in federal outlays have inhibited economic growth, raised the Nation's real tax burden, diverted resources from more productive private uses, and discouraged production and investment....
>
> A major legislative initiative is being proposed for the AFDC program to better target welfare assistance on those most in need, to reduce incentives for those remaining on assistance and to improve program management.... [The social welfare program changes] will result in an estimated $1.0 billion in Federal savings in 1982 growing to $1.3 billion by 1986.

Budget Issues for Fiscal Year 1982: Hearings to Consider Reagan Administration FY 1982 Spending Reduction Proposals Before the House Comm. on Budget, 97th Cong., 1st Sess. 226, 227, 238 (1981) (statement of Richard S. Schweiker, Secretary of U.S. Dept. of Health and Human Services) (J.A. 72). *See also Tax Aspects of the President's Economic Program: Hearings on the Administration's Economic Program Before the House Comm. on Ways and Means*, 97th Cong., 1st Sess. 156, 158, 160 (1981) (statement of Richard S. Schweiker, Secretary, U.S. Dept. of Health and Human Services) (J.A. 70).

OBRA effected changes in AFDC also were intended to serve certain welfare policy goals.[16]

If personal injury awards were excluded from the lump sum rule, the fiscal restraint and welfare policy objectives of Congress and the Administration would be defeated. Lump sums would not be budgeted to meet basic needs in lieu of relying on AFDC; recipients would be encouraged to spend the money quickly on consumer products or nonessential activities in order to retain or regain AFDC eligibility; and scarce public assistance dollars would be diverted from those who have no other means of support.

The DHHS confirmed the validity of Virginia's interpretation of 42 U.S.C. § 602(a)(17), when it issued its final rule regarding the treatment of lump sum payments. 51 Fed. Reg. 9191, 9205 (1986) (to be codified in 45 C.F.R. § 233.20(a)(3)(ii)(F)) (J.A. 86). Brief App. 23). Recognizing that personal injury awards were the very type of payments Congress intended to be treated as "income" and used to meet the family's future needs, DHHS now

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[16]In a prepared statement submitted to the relevant Senate and House Committees, Secretary Schweiker outlined these goals:

> Our next set of proposals is aimed at assuring that the AFDC program is available only as a temporary program to assist families with children who have no other means of support. Before the first dollar of aid is paid, all other sources of income should be pursued and all available income counted....
>
> *Emphasizing individual responsibility*
>
> We are also introducing proposals to ensure that people assume more personal responsibility for planning the use of income to meet their needs. When a large amount of money is received as a lump sum, for example, an inheritance, we will consider it as income available for support not only in the month it is received but to meet future needs.

Spending Reduction Proposals: Hearings on Administration's Spending Reduction Proposals Before the Senate Comm. on Finance, 97th Cong., 1st Sess. 33 (1981) (statement of Richard S. Schweiker, Secretary, U.S. Dept. of Health and Human Services) (J.A. 74). *See also Administration's Proposed Savings in Social Security Program: Hearings on the Administration's Proposed Savings in the Unemployment Compensation, Public Assistance and Social Service Programs Before the Subcomm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways and Means*, 97th Cong., 1st Sess. 12 (1981) (statement of Richard S. Schweiker, Secretary, U.S. Dept. of Health and Human Services) (J.A. 64).

has *required* states to treat such payments as "income" from a nonrecurring source subject to the lump sum rule.[17]

II.

TREATMENT OF PERSONAL INJURY AWARD AS "INCOME" SUBJECT TO THE LUMP SUM RULE DOES NOT VIOLATE 45 C.F.R. § 233.10(a)(1) (THE EQUITABLE TREATMENT REGULATION)

Virginia requires recipients who receive personal injury awards to use such monies in lieu of AFDC benefits to meet current living expenses. Virginia does not require recipients who own an allowable resource, and who either sell that resource or lose it to fire or other casualty, to spend the monies from the sale or any insurance proceeds to meet current living expenses. Such monies are treated as a resource, not subject to the lump sum rule. (J.A. 25). The court of appeals found this treatment of these two classes of recipients inequitable and arbitrary and in violation of the equitable treatment rule incorporated in the AFDC program regulation.[18]

While this case involves the application of the equitable treatment regulation and not the equal protection clause of the Fourteenth Amendment, the standard of review under the equal protection clause provides a useful reference point for analyzing

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[17]51 Fed. Reg. at 9205. "States must disregard from the lump sum payment any amount that is earmarked for the purpose for which it is paid, *i.e.*, monies for back medical bills resulting from accidents or injury, funeral or burial costs, replacement or repair of resources etc.." *Id.* at 9197. (J.A. 84).

[18]The court of appeals also found it inequitable that Virginia limited the offset of expenses related to the award to those expenses incurred within thirty days of receipt of the award. This point, however, has been mooted by the implementation by Virginia of changes that were made to the Social Security Act by the Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2632(a), 98 Stat. 494, 1141. *See Kremens v. Bartley*, 431 U.S. 119 (1977). DHHS regulations now permit the reduction of a lump sum when an individual uses the money to pay for certain expenses regardless of when incurred. 51 Fed. Reg. at 9197 (J.A. 84).

Even without such change, Virginia's former policy of limiting the offset of expenses to those incurred prior to and within thirty days of the receipt of the award was a rational way of responding to the obvious fact that future expenses are impossible to predict with any degree of precision.

the regulation. It is well settled "that the equal protection clause does not forbid discrimination with respect to things that are different," *Puget Sound Co. v. Seattle*, 291 U.S. 619, 624 (1934), and the situations in which these two classes of recipients find themselves clearly are different. The lump sum rule precludes the *acquisition* of new resources with funds that could be used to meet current necessary living expenses. Certainly that is different from permitting members of a household to *retain* certain resources they possessed when they applied for AFDC, even if they lose one of these resources and choose not be replace it.

Even if the situations of the two classes of recipients were not different, however, the absence of perfect equality between them is sustainable. The application of the lump sum rule involves economic issues and questions of social welfare policy and does not affect freedoms guaranteed by the Bill of Rights, nor is the distinction it creates inherently invidious. *Dandridge v. Williams*, 397 U.S. 471 (1970). Using the constitutional standard, Virginia's application of the lump sum rule must be upheld under the equitable treatment rule if it advances legitimate governmental objectives in a rational fashion. *Id.; Schweiker v. Wilson*, 450 U.S. 221 (1981); *Jefferson v. Hackney*, 406 U.S. 535 (1972).[19]

In this case, Virginia has advanced both legitimate governmental goals and a rational basis for the application of the lump sum rule. Application of the lump sum rule to personal injury awards by Virginia focuses scarce public assistance funds on those who need them most, eliminates the perverse disincentive that encourages quick depletion of the lump sum in

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[19]In *Schweiker*, this Court held:

> Thus, the pertinent inquiry is whether the classification...advances legitimate legislative goals in a rational fashion....[This standard] does not allow us to substitute our personal notions of good public policy for those of Congress:
>
> > In the area of economics and social welfare, a State does not violate the Equal Protection Clause ... merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequity."

Schweiker v. Wilson, 450 U.S. at 234.

order to regain eligibility, and reduces spending. This is certainly a legitimate governmental objective.

The distinction made between individuals in households that are permitted to retain resources already held and those that are precluded from acquiring new resources with the proceeds of a lump sum payment is not an irrational one. In fact, individuals in both households are treated equally insofar as possible, in that they are given the opportunity to remedy, replace or repair the injury or damage for which the lump sum is received. For the recipient of a personal injury award, medical and legal expenses related to the award are deducted and the remainder of the lump sum is considered available to meet the family's living expenses. In the case of a property damage award, it is assumed the money will be spent to replace the resource. The possibility that someone might not actually repair or replace damaged personal or real property for which he recovers compensation may be an imperfection, but the court of appeals' decision improperly demands mathematical equality. As long as the classification chosen "advances a reasonable and identifiable governmental objective," *Schweiker v. Wilson*, 450 U.S. at 235, courts must disregard the existence of alternative methods of classification that they might, as individuals, prefer. *Id. See also Jefferson v. Hackney*, 406 U.S. at 546.

CONCLUSION

Both the Administration and Congress used the word "income" within the lump sum rule with the intent that it be given a broad meaning to include nonrecurring payments of inheritances, gifts, social security benefits and personal injury awards. Any restriction of the term to a narrower meaning would defeat the important goals of encouraging individual responsibility and retargeting benefits to those most in need which Congress and the Administration attempted to achieve. Under established rules of statutory construction, the intent of Congress must be given effect.

Additionally, the application of the lump sum rule to personal injury awards while permitting property insurance awards to be treated as a resource does not violate the equal treatment regulation. Similarly situated individuals are treated equally under Virginia's rule. Even if an inequality does exist, the application of the rule advances legitimate governmental goals in a rational fashion. That is all the standards set by this Court require.

Accordingly, the judgment of the court of appeals below was erroneous and should be reversed.

Respectfully submitted,

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BRIEF APPENDIX 1

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PART 233 OF CHAPTER II, TITLE 45 CODE OF FEDERAL REGULATIONS § 233.20(F)

§ 233.20 Need and amount of assistance.

(a)***
(3)***
(ii)***

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the state need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC), title II and other retroactive monthly benefits, and payments in the nature of a windfall, *e.g.*, inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, *i.e.*, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc. the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month.***

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BRIEF APPENDIX 2

U.S. CONGRESS, HOUSE COMMITTEE ON WAYS & MEANS, "DESCRIPTION OF THE ADMINISTRATION'S LEGISLATIVE RECOMMENDATIONS UNDER THE JURISDICTION OF THE WAYS & MEANS COMMITTEE," 97-1, MARCH 18, 1981.

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Section 5. Aid to Families with Dependent Children (AFDC)

Summary

President Reagan's FY82 budget of March 10, 1981 contains a dozen legislative proposals for AFDC that it estimates would cut benefit outlays that year by almost $1 billion. This is double the savings contemplated from the administration's February 18 package of five proposals, all of which appeared in the original FY82 budget of the Carter administration.

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Details of AFDC Proposals

The March 10 budget contains, in all, some 21 AFDC proposals, plus 5 dealing with child support enforcement; but only 12 of the AFDC proposals are credited with FY82 budget savings.

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AFDC Proposal 13: Averaging unearned income received as a lump-sum payment.

Background:

According to DHHS, lump-sum payments that meet the definition of income, such as retroactive Social Security payments, now are counted as income in the month when received, and, if an excess remains, as resources thereafter.

Proposed Change:

Require States to consider all lump-sum payments as income available to meet a family's needs. The household would be ineligible for AFDC if a lump-sum payment exceeded the standard of need. Any excess sum in the month when received would be carried forward for later use.

Impact:

DHHS estimates that the proposal would remove 5,000 families from AFDC, reducing Federal AFDC benefit outlays by $5 million in FY82 and yielding negligible administrative savings. However, it would boost food stamp benefits by an estimated $2 million. Thus, net savings would be $3 million.